

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EQUISTAR CHEMICALS, LP)
)
Defendant.)
_____)

Civil Action No. 1:07 CV - 4045

COMPLAINT

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

I. NATURE OF THE ACTION

1. This is a civil action brought against Equistar Chemicals, LP ("Equistar"), for alleged environmental violations at its seven chemical manufacturing facilities, located in Illinois, Iowa, Louisiana and Texas. Equistar's facilities are and have been in violation of the following environmental statutes and their implementing federal and state regulations: the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k; the Clean Water Act ("CWA"), 33 U.S.C. §§1251-1387; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050; and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675.

2. The United States seeks an injunction ordering Equistar to comply with the above-cited environmental statutes and regulations promulgated thereunder, and civil penalties for Equistar's past and ongoing violations.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 301, 309 and 402 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1342; Section 3008 of RCRA, 42 U.S.C. § 6928; Sections 304, 313 and 325 of EPCRA,

42 U.S.C. §§ 11004, 11023, and 11045; and Section 113 of CERCLA, 42 U.S.C. § 9613.

The Complaint states a claim upon which relief may be granted for injunctive relief and civil penalties against Equistar under the CAA, CWA, RCRA, EPCRA and CERCLA.

4. The Northern District of Illinois is an appropriate choice of venue in this action pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Equistar's Morris, Illinois, facility is located here and Equistar is doing business in this District. This venue is consistent with Section 113(b) of the CAA, 42 U.S.C. § 7413(b); CWA Section 309(b), 33 U.S.C. § 1319(b); RCRA Section 3008(a), 42 U.S.C. 6928(a); EPCRA Section 325(b), 42 U.S.C. § 11045(b); and CERCLA Section 113(b), 42 U.S.C. § 9613(b).

III. NOTICE

5. The United States has given notice of the commencement of this action to the States of Illinois, Iowa, Louisiana, and Texas as required by Section 113(a)(1) and (b)(1) of the CAA, 42 U.S.C. § 7413(a)(1) and (b)(1), Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. The 30-day period established in Section 113 of the CAA, 42 U.S.C. § 7413, between notification to the States and commencement of this civil action has elapsed.

IV. THE DEFENDANT

7. Equistar is a Delaware limited partnership with its principal place of business in Houston, Texas. Equistar is a wholly-owned subsidiary of Lyondell Chemical Company, and one of the largest producers of ethylene and polyethylene in the world.

8. At all times relevant to this Complaint, Equistar owned and operated the following seven petrochemical facilities which manufacture olefins and are the subject of the United States' Claims:

Morris, Illinois

Chocolate Bayou, Alvin, Texas

Clinton, Iowa

Corpus Christi, Texas

Lake Charles, Louisiana

La Porte, Texas

Channelview, Texas

9. Equistar is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 502(5) of the CWA, 33 U.S.C. §1362(5), Section 1004(15) of RCRA, 42 U.S.C. §6903(15), Section 329 (7) of EPCRA, 42 U.S.C. § 11049(7), and Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

V. STATUTORY AND REGULATORY BACKGROUND AND GENERAL ALLEGATIONS UNDER THE CLEAN WATER ACT

10. Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a) prohibits the "discharge of pollutants" except in compliance with certain sections of the CWA, including Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

11. The term "discharge of pollutants" is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to mean "any addition of any pollutant to navigable waters from any point source...."

12. The term "navigable waters" is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to mean "the waters of the United States, including the territorial seas."

13. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Environmental Protection Agency (“EPA”) may issue National Pollutant Discharge Elimination System (“NPDES”) permits to “persons” that authorize the discharge of any pollutant into navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such other conditions as EPA determines are necessary to carry out the provisions of the CWA.

15. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program and, after receiving approval of its program by the EPA, may issue NPDES permits. The States of Illinois, Iowa, Louisiana and Texas have established their own NPDES permit programs and received EPA approval.

16. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes commencement of a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328 or 1345, or is in violation of any permit condition or limitation implementing any of those sections in a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

17. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301, 302, 306, 307, 308, 318 or 405 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328 or 1345, in violation of any permit condition or limitation

implementing any of those sections in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation.

18. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after March 15, 2004, any person who violates Sections 301, 302, 306, 307, 308, 318 or 405 of the CWA, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328 or 1345, or is in violation of any permit condition or limitation implementing of any those sections in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for such violation. See 69 Fed. Reg. 7121 (Feb. 13, 2004).

A. CHANNELVIEW FACILITY

19. During the relevant time period, Equistar owned and operated a synthetic organic chemical manufacturing facility located at 8280 Sheldon Road, Channelview Texas (referred herein as “the Channelview facility”) that is located adjacent to an unnamed drainage ditch that discharges into Wallisville Gully, thence to the San Jacinto River Tidal in Segment No 1001 of the San Jacinto River Basin.

20. The Channelview facility is a “point source” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Equistar’s effluent of treated process water, utility water, contaminated storm water, and its industrial waste water is each a “pollutant” as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. The San Jacinto River is a “navigable water” as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. Equistar is a “person” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and during the relevant time period, Equistar’s Channelview facility was subjected to the requirements of its NPDES Permit No. TX0003531.

24. Pursuant to Equistar’s Permit No. TX0003531, Equistar is required to perform daily sampling, maintain certain records, perform quality assurance and quality control of all effluent characteristic that is set forth in its Permit No. TX0003531 to ensure that each effluent discharge meets the applicable parameter(s), including the parameters for solid waste before discharging its effluent into the waters of the United States from each respective outfall.

25. On February 3 through 14, 2003, the National Enforcement Investigation Center (“NEIC”) and EPA’s inspectors conducted a multimedia compliance inspection (the “Channelview Inspection”) at the Channelview facility on behalf of EPA, Region 6.

26. During and/or subsequent to the Channelview inspection, NEIC and EPA conducted a site inspection and reviewed Equistar’s operational records, and Discharge Monitoring Reports (“DMRs”) to ascertain Equistar’s compliance with the CWA, the regulations promulgated thereunder, and Equistar’s Permit No. TX0003531.

B. MORRIS FACILITY

27. During the relevant time period, Equistar owned and operated a synthetic organic chemical manufacturing facility located at 8805 North Tabler Road, Morris Illinois (referred to herein as “the Morris facility”) that discharges to the Illinois River and the Aux Sable Creek from respective outfalls as set forth in its Permit No. IL0002917.

28. The Morris facility is a “point source” as that term is defined in Section

502(14) of the CWA, 33 U.S.C. § 1362(14).

29. Equistar's effluent of treated process water, sanitary wastewater, cooling tower blow down, reverse osmosis reject water, raw water, storm water, and industrial waste water is each a "pollutant" as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

30. The Illinois River and the Aux Sable Creek is each a "navigable water" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

31. Equistar is a "person" as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and during the relevant time period, Equistar's Morris facility was subjected to the requirements of its NPDES Permit No. IL0002917.

32. Pursuant to Equistar's Permit No. IL0002917, Equistar is required to perform daily sampling, maintain certain records, perform quality assurance and quality control of all effluent characteristic that is set forth in its Permit No. IL0002917 to ensure that each effluent discharge meets the applicable parameter(s), including the parameters for solid waste before discharging its effluent into the waters of the United States from each respective outfall.

33. During the months of October 2002 and February 2003, the NEIC and EPA's inspectors conducted a multimedia compliance inspection (the "Morris Inspection") at the Morris facility.

34. During and/or subsequent to the Morris inspection, NEIC and EPA conducted a site inspection and reviewed Equistar's operational records, and DMRs to ascertain Equistar's compliance with the CWA, the regulations promulgated thereunder, and Equistar's Permit No. IL0002917.

**VI. STATUTORY AND REGULATORY BACKGROUND AND GENERAL
ALLEGATIONS UNDER THE
RESOURCE CONSERVATION AND RECOVERY ACT**

35. The Resource Conservation and Recovery Act ("RCRA") was enacted on October 21, 1976 and establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 *et seq.*

36. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Part 260 through 272 applicable to generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage, and disposal of hazardous waste without a permit or equivalent "interim status." They prohibit land disposal of certain hazardous wastes and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.

37. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, the EPA may authorize a state to administer a state hazardous waste program in lieu of the federal program when it deems the state program to be equivalent to the federal program.

38. On December 26, 1984, (49 Fed. Reg. 48300) the State of Texas received final authorization for its base RCRA program and there have been subsequent authorized revisions to said base program.

39. On January 31, 1986, (51 Fed. Reg. 3778) the State of Illinois received final authorization for its base RCRA program and there have been subsequent authorized revisions to said base program.

40. With the addition of Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), new requirements imposed pursuant to the authority of the Solid Waste Disposal Act "SWDA," 42 U.S.C. §§ 6901 to 6992k, are immediately applicable in the authorized States upon the federal effective date.

41. The Texas Commission on Environmental Quality ("TCEQ") and the Illinois Environmental Protection Agency ("IEPA") are the State agencies designated to carry out the authorized RCRA program in Texas and Illinois, respectively.

42. Specifically, the federal hazardous waste program is managed in the State of Texas pursuant to the Texas Administrative Code ("TEX.ADMIN.CODE") and the rules and regulations promulgated thereunder.

43. Specifically, the federal hazardous waste program is managed in the State of Illinois pursuant to the Illinois Administrative Code ("IAC") and the rules and regulations promulgated thereunder.

44. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA can take an enforcement action against a person who violates the hazardous waste regulations of an authorized state for appropriate relief, including a temporary or permanent injunction.

45. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes penalties of up to \$25,000 per day. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), the maximum civil penalty per day for each such violation occurring after January 30, 1997 but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

VII. STATUTORY AND REGULATORY BACKGROUND AND GENERAL ALLEGATIONS UNDER THE CLEAN AIR ACT

A. Clean Air Act - General Provisions -

46. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

47. Sections 113(b) (1) and (2) of the CAA authorizes the Administrator to bring a civil action in a federal district court against any person who has violated any requirement or prohibition of an applicable implementation plan, permit, or any rule promulgated under the Act. 42 U.S.C. §§ 7413(b)(1) and (2).

48. Section 113(b) of the CAA authorizes the assessment of civil penalties not to exceed \$32,500 per day for each violation of the CAA, pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), as amended in 69 Fed. Reg. 7121 (February 13, 2004).

49. Section 110 of the Clean Air Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS"). Pursuant to Sections 113(a) and (b) of the Act, 42 U.S.C. §§ 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113. See also 40 C.F.R. § 52.23.

50. EPA subsequently approved and made federally enforceable the SIPs for the states of Iowa, Illinois, Louisiana, and Texas. See 40 CFR Part 52, Subpart Q, § 52.820-

52.841; Subpart O, § 52.720 – 52.746; Subpart T, §§ 52.970-52.999; and Subpart SS, §§ 52.2270-52.2311, respectively.

51. A violation of a federally enforceable SIP requirement is a violation of Section 110 of the Clean Air Act, 42 U.S.C. § 7410.

52. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

53. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements, as defined in 40 C.F.R. § 70.2.

54. Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), requires any person required to have a permit under Title V to timely submit an application for a permit.

55. 40 C.F.R. § 70.5(a) provides that an owner or operator shall submit a timely and complete permit application in accordance with Part 70 requirements.

56. EPA granted interim approval to the State of Illinois Title V operating permit program on March 7, 1995, and final approval on December 4, 2001. The program became effective on March 7, 1995.

57. For purposes of the Morris Claims, the Illinois Title V operating permit program provides that sources subject to the program submit a complete application within one year of the effective date of interim approval.

58. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the

Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the CAA, or any rule promulgated, issued or approved under Title V of the CAA.

B. Clean Air Act - Protection of Stratospheric Ozone –

59. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q (“Stratospheric Ozone Protection”) implements the Montreal Protocol on Substances that Deplete the Ozone Layer, and mandates the elimination or control of emissions of substances which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as Class I and Class II substances.

60. Section 608 of Subchapter VI, 42 U.S.C. § 7671g (“National Recycling and Emission Reduction Program”) requires that the EPA promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration.

61. EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.169, (“Recycling and Emissions Reduction”) (hereinafter “Subpart F Regulations”), on May 14, 1993. 58 Fed. Reg. 28,712.

62. Section 608 of the CAA states, “it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance of industrial process refrigeration, to knowingly vent or otherwise release or dispose of any class I or class II substances used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment.”

42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

63. The Subpart F Regulations contain leak repair requirements for industrial process equipment containing more than fifty (50) pounds of refrigerant. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

C. Clean Air Act - Benzene Waste NESHAP -

64. The CAA requires EPA to establish emission standards for each “hazardous air pollutant” (“HAP”) in accordance with Section 112 of the CAA, 42 U.S.C. § 7412.

65. In March 1990, EPA promulgated national emission standards applicable to benzene-containing wastewaters. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61 Subparts FF (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of petrochemical products and petrochemical waste and is highly volatile.

66. Pursuant to the Benzene Waste NESHAP, Equistar’s petrochemical manufacturing facilities are required to tabulate the total annual benzene (“TAB”) content in their wastewater. If the TAB is over 10 megagrams, the facility is required to elect a control option that will require the control of all waste streams, or control of certain select waste streams.

D. Clean Air Act - Leak Detection and Repair -

67. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants (“National Emission Standards for Hazardous Air Pollutants” or “NESHAPs”). Pursuant to Section

112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated national emission standards for equipment leaks (fugitive emission sources). The focus of the Leak Detection and Repair ("LDAR") program is the facility-wide inventory of all possible leaking valves, the regular monitoring of those valves to identify leaks of hazardous air pollutants ("HAP") and volatile organic compounds ("VOCs"), and the repair of leaks as soon as they are identified.

68. The LDAR regulations applicable here are set forth in 40 C.F.R. Part 60, Subparts A and VV; 40 C.F.R. Part 61, Subparts A and J; 40 C.F.R. Part 63, Subparts A, F, G and UU at 40 C.F.R. Part 60, Subpart VV (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry) and 40 C.F.R. Part 63, Subpart H (National Emission Standards For Organic Hazardous Air Pollutants for Equipment Leaks).

E. Clean Air Act - New Source Performance Standards Subpart NNN -

69. Section 111(b)(1)(A) of the CAA requires EPA to publish (and periodically revise) a list of categories of stationary sources including those categories that, in EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Once a category is included on the list, Section 111(b)(1)(B) requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard ("NSPS"). 42 U.S.C. § 7411(b)(1)(A).

70. After promulgation of NSPS, Section 111(e) makes it unlawful for any owner or operator of any new source subject to the NSPS to operate the source in violation of the standard. 42 U.S.C. § 7411(e).

71. EPA's regulations at 40 C.F.R. Part 60, Subpart A contain general provisions applicable to all NSPS sources, including the obligation to conduct performance tests at representative conditions as required by 40 C.F.R. § 60.8, and to conduct opacity observations as required by 40 C.F.R. § 60.11. Subpart A provides that a new standard of performance shall apply to any affected facility at which construction commenced after the promulgation of the standard, or if earlier, after the date of publication of a proposed standard.

72. The NSPS regulations that are applicable here include the standards, control, monitoring, testing, reporting and recordkeeping requirements found at 40 C.F.R. §§ 60.660 through 60.668 (Subpart NNN) (Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Distillation Operations).

F. Clean Air Act - Flaring and New Source Performance Standards Subpart A -

73. Pursuant to Section 111(b), 42 U.S.C. § 7411(b), EPA promulgated general regulations applicable to all NSPS source categories. Those general regulations are set forth at 40 C.F.R. Part 60 Subpart A.

74. The NSPS regulations that are applicable here include: the standards, control, monitoring, testing, reporting and recordkeeping requirements found at 40 C.F.R. §§ 60.1 through 60.19 (Subpart A) (general requirements) to the extent such requirements are applicable to Flaring Devices.

**VIII. STATUTORY AND REGULATORY BACKGROUND AND
GENERAL ALLEGATIONS UNDER THE EMERGENCY PLANNING AND
COMMUNITY RIGHT-TO-KNOW ACT.**

75. The Emergency Planning and Community Right-to-Know Act ("EPCRA") provides communities with information on potential chemical hazards within their boundaries and fosters state and local emergency planning efforts to control any accidental releases. Emergency Planning and Community Right-to-Know Programs, Interim Final Rule, 51 Fed.Reg. 41,570 (Nov. 17, 1986).

76. EPCRA imposes and mandates notification requirements on industrial and commercial facilities and requires the creation of state emergency response commissions and local emergency planning committees. EPCRA establishes a framework of state, regional, and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of health-threatening release. The local emergency planning committees are charged with developing emergency responses plans based on the information provided by facilities. Sections 301-303 of EPCRA, 42 U.S.C. §§ 11001-11003.

77. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any EHS, the release of which shall be required to be reported under Sections 304(b) and 304(c) of EPCRA, 42 U.S.C. §§ 11004(b) and (c) ("Reportable Quantity" or "RQ"). The list of RQs for extremely hazardous substances is codified at 40 C.F.R. Part 355. Appendices A and B.

78. Under Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder, Equistar is required annually to calculate and report to EPA various data regarding toxic chemicals at its facilities during the preceding year. Such data must include the “annual quantity of the toxic chemical entering each environmental medium.” 42 U.S.C. § 11023 (g)(1)(c)(iv).

79. Section 329(4) of EPCRA, 42 U.S.C. § 11029(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, “all buildings, equipment, structures and other stationary items which are located on a single site ... and which are owned or operated by the same person.”

80. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and 40 C.F.R. Part 355.40(b)(1), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (“SERC”) and the Local Emergency Planning Committee (“LEPC”) when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than RQ.

81. Equistar is required to report pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, regarding chlorine at its Channelview and Morris facilities.

82. The SERC for the Channelview facility is, and has been at all times relevant to this Complaint, the Texas Department of Public Safety (“DPS”), located at 5805 North Lamar Boulevard, P.O. Box 4087, Austin, Texas 78773.

83. The LEPC for the Channelview facility is, and has been at all times relevant to this Complaint, the North Channel Harris County (“NCHC”), mailing address, P.O. Box 1847, Channelview, Texas 77530.

84. The SERC for the Morris facility is, and has been at all times relevant to this Complaint, the State Emergency Management Agency ("SEMA"), Bureau of Disaster Assistance and Preparedness, 1035 Outer Park Drive, Springfield, Illinois 62704.

85. The LEPC for the Morris facility is, and has been at all times relevant to this Complaint, the Grundy County Local Emergency Planning Committee ("Grundy County"), located at 1320 Union Street, Room e-05, Morris, Illinois 62704.

86. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes penalties of up to \$25,000 per day for violations of the Act. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), the maximum civil penalty per day for each such violation occurring after January 30, 1997 but before March 16, 2004, is increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 is increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

**IX. STATUTORY AND REGULATORY BACKGROUND AND
GENERAL ALLEGATIONS UNDER THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND LIABILITY ACT**

87. Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which when released into the environment may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any hazardous substances, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ").

88. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to, or greater than the RQ to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the CWA, 33 U.S.C. § 1321(d)(2)(E), of such release.

89. Equistar’s Channelview and Morris plants are each a “facility,” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. Part 302.3

90. As a corporation, Equistar is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. Part 302.3.

91. Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), authorizes penalties of up to \$25,000 per day. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), the maximum civil penalty per day for each such violation occurring after January 30, 1997 but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

CLAIMS FOR RELIEF

Count 1 – Clean Water Act Channelview – Permit Effluent Limit Violations

92. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

93. At all relevant times the Channelview facility discharged from its permitted outfalls 001, 002, 003, and 004 into the San Jacinto River.

94. Based on review of the Equistar's DMRs, filed during the period of January 2000 through February 2007, Equistar exceeded its effluent limitations set forth in Permit No. TX0003531 on at least ninety-eight (98) separate occasions.

95. Equistar therefore had ninety-eight (98) or more exceedances from outfalls 001, 002, 003, and 004 in violation of the CWA and Equistar's Permit No. TX0003531.

96. Unless restrained by an Order of the Court, these and similar violations of the CWA and Equistar's Permit are likely to continue.

97. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 2 – Clean Water Act
Channelview- Permit Application Requirements Violations**

98. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

99. Pursuant to 40 C.F.R. § 122.21(g)(2), Equistar is required as part of its permit application to provide to the Director of TCEQ a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units.

100. The line drawings provided by Equistar with its NPDES permit applications were incorrect and incomplete in violation of the CWA and 40 C.F.R. § 122.21(g)(2).

101. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for

each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

Count 3 – Clean Water Act
Channelview- Permit Application Requirements Violation and
Unauthorized Discharge Violation

102. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

103. Pursuant to 40 C.F.R. §122.21(g)(1), Equistar is required as part of its permit application to provide to the Director of TCEQ with the location of any outfalls by latitude and longitude to the nearest 15 seconds and the name of the receiving water.

104. Equistar failed to identify as an outfall the direct discharge point of the barge dock storm water into the San Jacinto River in violation of the 40 C.F.R. § 122.21(g)(1) which requires complete and accurate information in permit application. Equistar's discharges from unidentified outfalls are unauthorized.

105. Each day of Equistar's unauthorized discharge from the barge dock is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

106. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

Count 4 – Clean Water Act
Channelview- Permit Effluent Limitation and Monitoring Violations

107. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

108. Pursuant to the Permit No. TX0003531- Effluent Limitation and Monitoring Requirements, Number 2 for Outfall 001, all domestic sewage shall be given complete treatment (both primary and secondary) and chlorinated sufficiently to maintain a least a 1.0 mg/l chlorine residual and at most a 4.0 mg/l chlorine residual after at least 20 minutes contact time (based on peak flow) prior to mixing with other waters, and shall be monitored 5 times per week, by grab sample.

109. Equistar failed to treat its domestic sewage prior to disinfection and mixing with other wastewater streams in violation of the CWA and its Permit No. TX0003531.

110. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 5 – Clean Water Act
Channelview- Permit Monitoring and Reporting Violations**

111. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

112. Pursuant to the Permit No. TX0003531- Monitoring and Reporting Requirements and Test Procedures, test procedures for the analysis of pollutants shall comply with procedures specified in Title 30 of the Texas Administration Code ("TEX.ADMIN.CODE") §§ 319.11 – 319.12. Measurement, tests and calculations shall be accurately accomplished in a representative manner.

113. TEX.ADMIN.CODE Tit. 30, §§ 319.11-319.12 incorporates by reference 40 C.F.R. Part 136 - Guidelines Establishing Test Procedures for the Analysis of Pollutants.

114. Equistar failed to comply with TEX.ADMIN.CODE §§ 319.11-319.12 and 40 C.F.R. Part 136. Specifically, several of Equistar's compliance results were deficient due to incorrect preservation techniques, incorrect sampling, and/or incorrect sampling frequency.

115. Unless restrained by an Order of the Court, this and similar violations of the Permit No. TX0003531 are likely to continue.

116. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 6 – Clean Water Act
Channelview – Permit Record Violation**

117. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

118. Pursuant to Equistar's Permit No. TX0003531 - Operational Requirements 11(f), the Permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TEX.ADMIN.CODE Chapter 335 and must include the following as it pertains to wastewater treatment and discharge:

- i. Volume of waste and date(s) generated from treatment process;
- ii. Volume of waste disposed of on-site or shipped off-site;
- iii. Date(s) of disposal;
- iv. Identity of hauler or transporter;

- v. Location of disposal; and
- vi. Method of final disposal.

119. The above records shall be maintained on a monthly basis. The records shall be retained at the facility site and/or shall be readily available for review by authorized representatives of TCEQ for at least five years.

120. Equistar failed to maintain complete sludge management records in violation of its Permit No. TX0003531 and 30 TEX.ADMIN.CODE Chapter 335.

121. Unless restrained by an Order of the Court, these and similar violations of the CWA, 30 TEX.ADMIN.CODE Chapter 335 and Equistar's Permit No. TX0003531 are likely to continue.

122. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 7 – Clean Water Act
Channelview – Unauthorized Discharged**

123. Paragraphs 1 through 26 of the Complaint are incorporated herein by reference as if fully set forth below.

124. Conditions in Equistar's Permit No. TX0003531 authorize only post first flush process area storm water runoff be discharged through outfall 002.

125. On six (6) or more occasions, from January 2000 through December 2002, Equistar discharged unauthorized first flush process area storm water through outfall 002 in violation of its Permit No. TX0003531.

126. Each day of the unauthorized discharge from outfall 002 is a violation of Section 301 of the CWA, 33 U.S.C. § 1311 and Permit No. TX0003531.

127. Unless restrained by an Order of the Court, these and similar violations of the CWA and Equistar's permit are likely to continue.

128. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 8 – Clean Water Act
Morris – Permit Effluent Limit Violations**

129. Paragraphs 1 through 18 and Paragraphs 27 through 34 of the Complaint are incorporated herein by reference as if fully set forth below.

130. At all relevant times the Morris facility discharged from its permitted outfalls 001, 002, 005, 006, and 007 into the Illinois River and the Aux Sable Creek.

131. Based on Equistar's DMRs, filed during the period of January 2000 and February 2007, Equistar exceeded effluent limitations set forth in its Permit No. IL0002917 on at least twenty-six (26) separate occasions.

132. Equistar therefore had twenty-six (26) or more exceedances from outfalls 001, 003, 005, 004, 005, 006, and 007 in violation of the CWA and Equistar's Permit No. IL0002917.

133. Unless restrained by an Order of the Court, these and similar violations of the CWA and Equistar's permit are likely to continue.

134. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the

CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 9 – Clean Water Act
Morris- Permit Monitoring Violation**

135. Paragraphs 1 through 18, and 27 through 34 of the Complaint are incorporated herein by reference as if fully set forth below.

136. Pursuant to the Permit No. IL0002917- Effluent Limitations and Monitoring Requirements, the effluent limitations for oil and grease from outfalls 001, 002, 003, 004, 005, and 006, are not to exceed 15mg/L monthly average and 30mg/L daily maximum.

137. Permit No. IL0002917 Standards Conditions (10)(d) requires that monitoring be conducted according to the test procedures approved under 40 C.F.R. Part 136.

138. The regulations set forth at 40 C.F.R. § 136.3 establish preservation temperatures and holding times for oil and grease samples, and require that the samples be cooled to 4° C, with a maximum holding time of twenty-eight days.

139. On October 31, 2002, Equistar's storage refrigerators at outfalls 002, 004, and 005 where oil and grease samples are stored were operating at temperatures in excess of 4° C.

140. Unless restrained by an Order of the Court, this and similar violations of Permit No. IL 0002917 are likely to continue.

141. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

Count 10 – Clean Water Act
Morris- Spill Prevention Control and Countermeasure Violation

142. Paragraphs 1 through 18, and 27 through 34 of the Complaint are incorporated herein by reference as if fully set forth below.

143. Oil is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

144. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), requires that the President establish procedures, methods and equipment and other requirements for equipment to prevent discharge of oil and hazardous substances from onshore facilities into or upon navigable waters of the United States or adjoining shorelines, and to contain such discharges.

145. The regulations at 40 C.F.R. Part 112, promulgated pursuant to Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), establish procedures, methods and equipment and other requirement for equipment to prevent discharge of oil from onshore facilities into or upon the navigable waters of the United States or adjoining shorelines. These regulations apply to owners or operators of onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonable be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. Part 110, into or upon the navigable waters of the United States and adjoining shorelines. 40 C.F.R. § 112.1(b). Equistar’s Morris facility stores and consumes oil and oil products and is therefore subject to these regulations.

146. Pursuant to 40 C.F.R. § 112.3, owners and operators of facilities subject to the requirements of 40 C.F.R. Part 112 are required to prepare and implement a written

Spill Prevention Control and Countermeasure ("SPCC") Plan in accordance with 40 C.F.R. § 112.7.

147. Title 40 C.F.R. §§ 112.7 and 112.8 set forth guidelines for the preparation and implementation of a SPCC plan pertaining to onshore oil production facilities. These requirements include, but are not limited to, the installation of containment and/or diversionary structures to prevent the discharge of oil from reaching navigable waters; periodic inspections of above-ground tanks, valves and pipelines; and implementation of a flow line maintenance program.

148. Pursuant to 40 C.F.R. § 112.8(c)(2), all bulk storage container installations shall be constructed to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. Dike areas should be sufficiently impervious to contain discharged oil.

149. Equistar failed to comply with 40 C.F.R. § 112.8(c)(2) for tanks FB202, FB207, 25TKS7506, and two 300-gallon tanks.

150. Equistar's SPCC plan identified a process unit as tank FB204 in violation of 40 C.F.R. § 112.7(a)(3).

151. Unless restrained by an Order of the Court, these and similar violations are likely to continue.

152. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), Equistar is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each violation of the CWA occurring before March 16, 2004 and up to \$32,500 per day for each violation of the CWA occurring on or after March 16, 2004.

**Count 11 – The Resource Conservation and Recovery Act
Channelview- Failure to Make Hazardous Waste Determination**

153. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

154. Pursuant to 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10, Equistar is a generator of hazardous waste as identified or listed in 40 C.F.R. Part 261.

155. Pursuant to 30 TEX.ADMIN.CODE § 335.1(61) and 40 C.F.R. § 262.11, any person who generates a solid waste as defined in 40 C.F.R. § 261.2 must determine if that waste is a hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

156. Equistar, on at least four occasions, failed to make a hazardous waste determination of its solid waste generated at its OP-I Aeration Basin, OP-II Aeration Basin, Equalization Basin, and East Aeration Basin in violation of 40 C.F.R. § 262.11.

157. Unless restrained by an Order of the Court, these and similar violations of the TEX.ADMIN.CODE and RCRA are likely to continue.

158. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 12 – The Resource Conservation and Recovery Act
Channelview- Disposal of Hazardous Waste without a Permit**

159. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

160. Pursuant to 30 TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1(b), the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited.

161. Equistar does not have a RCRA permit for its Equalization and East Aeration Basins.

162. Equistar's RCRA permit does not allow it to dispose of benzene hazardous waste in its OP-I or OP-II Aeration Basins.

163. Equistar disposed of benzene hazardous waste in its Equalization Basin, East Aeration Basin, OP-I and OP-II Aeration Basins in violation of TEX.ADMIN.CODE §§ 335.2 & 335.43 and 40 C.F.R. § 270.1.

164. Unless restrained by an Order of the Court, these and similar violations of the TEX.ADMIN.CODE and RCRA are likely to continue.

165. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 13 – The Resource Conservation and Recovery Act
Channelview- Permit Violation**

166. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

167. Pursuant to Equistar's Permit, ID No. TXD058275769, Condition III.C.10a, Equistar's container storage area shall have a secondary containment system which has a base underlying the containers and is constructed of reinforced concrete and maintained free of cracks or gaps.

168. EPA during its inspections of February 3 through 14, 2003, observed and photographed cracks in the pad at Equistar's secondary containment storage area.

169. Equistar has therefore violated Condition III.C.10a of Permit, ID No. TXD058275769.

170. Unless restrained by an Order of the Court, this and similar violations of Equistar's Permit, ID No. TXD058275769 are likely will continue.

171. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 14 – The Resource Conservation and Recovery Act
Channelview- Land Disposal Restrictions Violations**

172. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

173. EPA regulations at 40 C.F.R. Part 268 and 30 TEX.ADMIN.CODE § 335.431, which incorporates the federal regulations by reference, identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

174. Pursuant to 40 C.F.R. §§ 268.38 and 261.24, benzene is a prohibited hazardous waste with a regulatory limit of 0.5mg/L. Benzene waste may only be land disposed if it no longer exhibits a prohibited characteristic of hazardous waste at the point of land disposal.

175. A review of Equistar's record indicated that Equistar violated land disposal restrictions by placing benzene over the regulatory limits into its OP-I Aeration Basin,

East Aeration Basin, and its Equalization Basin on at least four occasions in violation of 40 C.F.R. Part 268 and 30 TEX.ADMIN.CODE § 335.431.

176. Unless restrained by an Order of the Court, this and similar violations of the TEX.ADMIN.CODE and RCRA are likely to continue.

177. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 15 – The Resource Conservation and Recovery Act
Morris- Failure to Retain Land Disposal Records**

178. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

179. Equistar is a generator of hazardous waste in accordance with 35 IAC 722.111 and 40 C.F.R § 260.10.

180. Pursuant to 35 IAC 728.107(a)(8) and 40 C.F.R. § 268.7(a)(8), Equistar is required to retain on-site a copy of all notices, certifications, waste analysis data, and other documentation related to its hazardous waste for at least three years from the date the waste was last sent to on-site or off-site treatment, storage or disposal facility.

181. In addition, 35 IAC 728.107(a)(2) and 40 C.F.R. § 268.7(a)(2) require a generator to send a one-time written notice with each initial shipment to each treatment or storage facility receiving the waste, and retain a copy of the written notice on-site.

182. On at least three occasions, Equistar failed to retain land disposal restriction notifications for shipments of hazardous waste to Kentucky in violation of 35 IAC 728.107(a)(8) and 40 C.F.R. § 268.7(a)(8).

183. On at least one occasion, Equistar failed to retain a copy of a land disposal restriction notification for a lab pack shipment of hazardous waste in violation of 35 IAC 728.107(a)(8) and 40 C.F.R. § 268.7(a)(8).

184. On at least sixteen occasions, Equistar's written notices to treatment and/or storage facilities receiving its hazardous waste (F001 through F005) were incorrect or incomplete in violation of 35 IAC 728.107(a)(8) and 40 C.F.R. § 268.7(a)(8) as evidenced by copies of the notices retained on-site.

185. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely to continue.

186. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 16 – The Resource Conservation and Recovery Act
Morris- Secondary Containment Area Violation**

187. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

188. Tank 3400 at the Morris facility contains hazardous waste (vinyl acetate) and is therefore required to have a secondary containment system pursuant to IAC 725.293(a)(1)(ii) and 40 C.F.R. § 262.34(a)(1)(ii).

189. All secondary containment systems must be free of gaps and cracks in accordance with IAC 725.293(e)(1)(c) and 40 C.F.R. § 265.193(e)(1)(iii).

190. Tank 3400 was located within a secondary containment system that was cracked in violation of IAC 725.293(e)(1)(c) and 40 C.F.R. § 265.193(e)(1)(iii).

191. Unless restrained by an Order of the Court, this and similar violations of the IAC and RCRA are likely to continue.

192. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 17 – The Resource Conservation and Recovery Act
Morris - Hazardous Waste Storage Without a Permit**

193. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

194. Pursuant to 35 IAC 722.134 and 40 C.F.R. § 262.34(b), a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the permit and operating standards for owners and operators of hazardous waste storage facilities.

195. Pursuant to 35 IAC 722.134(a)(1)(B) and 40 C.F.R. §§ 262.34(a) and 262.34(a)(1)(ii), a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided the waste is placed in tanks and the generator complies with several requirements, including the tank system and air emission requirements found at 40 C.F.R. Part 265, Subpart CC and the applicable tank systems requirements set forth at 40 C.F.R. § 265.193.

196. Equistar stored hazardous waste in the waste peroxide tank at Morris for longer than 90 days in violation of 35 IAC 722.134(a)(1)(B) and 40 C.F.R. § 262.34(a)(1)(ii).

197. Equistar stored hazardous waste in Tank FA-125 at Morris, which it subsequently shipped off-site as D001 hazardous waste.

198. Equistar used its waste alkyl tank at Morris to store D003 hazardous waste.

199. Equistar failed to operate Tank FA-125 in compliance with the requirements set forth at 40 C.F.R. Part 265, Subpart CC.

200. Equistar failed to operate the waste alkyl tank in compliance with the requirements at 40 C.F.R. § 265.193.

201. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely will continue.

202. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 18 – The Resource Conservation and Recovery Act
Morris - Failure to Make Hazardous Waste Determination**

203. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

204. Pursuant to 35 IAC 722.111 and 40 C.F.R. § 262.11, a person who generates a solid waste as defined in 40 C.F.R. § 261.2 must determine if that waste is a hazardous either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the processed used.

205. Equistar, on at least one occasion, failed to make a hazardous waste determination of its solid waste, spent methanol, in violation of 40 C.F.R. § 262.11.

206. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely will continue.

207. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 19. – The Resource Conservation and Recovery Act
Morris- Management of Hazardous Waste Container Violation**

208. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

209. Pursuant to 35 IAC 725.273(a) and 40 C.F.R. § 265.173(a) as referenced by 40 C.F.R. § 262.34(a)(1)(i), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove hazardous waste.

210. During the Morris inspection, inspectors observed an open container of hazardous waste (D001, oligomers liquid) in Equistar's Polypropylene Area in violation of 35 IAC 725.273(a) and 40 C.F.R. § 265.173(a).

211. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely will continue.

212. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 20 – The Resource Conservation and Recovery Act
Morris - Operating Record Violations**

213. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

214. Pursuant to 35 IAC 724.173(b)(1) and 40 C.F.R. § 264.73(b)(1), a description and quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal shall be maintained and kept at the facility in the operating record until closure of the facility as is required by appendix I of 40 C.F.R. Part 264.

215. On a number of occasions, Equistar violated 35 IAC 724.173(b)(1) and 40 C.F.R. § 264.73(b)(1) by failing to maintain adequate operating records which accurately reflected the management of the hazardous waste drums at Morris, and failing to indicate which drums were accepted into the hazardous waste container storage area.

216. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely to continue.

217. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2006.

**Count 21 – The Resource Conservation and Recovery Act
Morris - Failure to Meet the Permit Exemptions for Hazardous Waste**

218. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

219. Pursuant to 35 IAC 725.295(c) and 40 C.F.R. §§ 262.34(a) and 262.34(a)(1)(ii), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, among other requirements, the generator complies with the applicable requirements at 40 C.F.R. Part 265.

220. Pursuant to 35 IAC 725.295(c) and 40 C.F.R. § 265.195(c) as referenced by 40 C.F.R. § 262.34(a)(1)(ii), the owner or operator must document in the operating record of the facility an inspection of those items specified in 35 IAC 725.295(a) and 40 C.F.R. §§ 265.195(a) and (b).

221. On at least ninety-three occasions, Equistar's inspection records for the 90-days-or-less hazardous waste (peroxide) storage tanks were incomplete in violation of 35 IAC 725.295 and 40 C.F.R. §§ 265.195(a) and (b).

222. On at least eighty-seven occasions, Equistar's inspection records for the 90-days-or-less hazardous waste (vinyl acetate) storage tanks were missing in violation of 35 IAC 725.295(a) and (c) and 40 C.F.R. §§ 265.195(a) and (b).

223. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely to continue.

224. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 22 – The Resource Conservation and Recovery Act
Morris - Used Oil Violation**

225. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

226. Pursuant to 35 IAC 722.111 and 40 C.F.R. § 260.10, Equistar is a generator.

227. Pursuant to 35 IAC 739.122(c)(1) and 40 C.F.R. § 279.22(c)(1), containers and above ground tanks used to store used oil at generator facilities must be labeled or clearly marked with the words “Used Oil.”

228. During the Morris Inspection, inspectors observed at least twenty containers of used oil in the container storage area that were not labeled with the words “Used Oil” in violation of 35 IAC 739.122(c)(1) and 40 C.F.R. § 279.22(c)(1).

229. During the Morris Inspection, inspectors observed at least one tank of used oil in the low density polyethylene plant that was not labeled with the words “Used Oil” in violation of 35 IAC 739.122(c)(1) and 40 C.F.R. § 279.22(c)(1).

230. Unless restrained by an Order of the Court, these and similar violations of the IAC and RCRA are likely to continue.

231. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 23 – The Resource Conservation and Recovery Act
Morris - Contingency Plan and Emergency Procedures Violation**

232. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

233. Pursuant to 35 IAC 725.152(a) and 40 C.F.R. § § 265.51(a) and 265.52(a), each owner or operator must have a contingency plan for its facility that describes the actions the facility personnel must take to comply with the implementation and emergency procedure requirements in response to fires, explosions or any unplanned sudden or non sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility.

234. Equistar's contingency plan did not address the actions facility personnel must take to comply with the implementation and emergency procedure requirements in response to fires, explosions or any unplanned sudden or non sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water at the facility in violation of 35 IAC 725.152(a) and 40 C.F.R. § § 265.51(a) and 265.52(a).

235. Unless restrained by an Order of the Court, this and similar violations of the IAC and RCRA are likely to continue.

236. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 24 – The Resource Conservation and Recovery Act
Morris- Permit Violations**

237. Paragraphs 1 through 9, and 35 through 45 of the Complaint are incorporated herein by reference as if fully set forth below.

238. Pursuant to IL SITE ID NUMBER 0630600005, Permit Condition Section I, I. General Operating Requirements, Paragraph 7, Equistar's Morris facility is required to

maintain a 2-foot aisle space between the bay walls and any pallet in the container storage area.

239. Pursuant to IL SITE ID NUMBER 0630600005, Permit Condition Section I, C. Description/Condition of Containers, Paragraph 5, Equistar is required to mark clearly all containers using an alphanumeric identification.

240. Pursuant to IL SITE ID NUMBER 0630600005, Permit Condition Section I, E. Inspections, Equistar is required to inspect all equipment in the container storage area on a weekly basis.

241. On at least on one occasion, a pallet of used oil was located within 6 inches of the bay wall in violation of IL SITE ID NUMBER 0630600005 and the RCRA.

242. On at least one occasion none of the drums in the container storage area were marked with an alphanumeric identification in violation of IL SITE ID NUMBER 0630600005 and the RCRA.

243. A review of Equistar record indicated that, on at least four occasions, Equistar's weekly inspection records did not document that all equipment in the container storage area had been inspected in violation of IL SITE ID NUMBER 0630600005 and the RCRA.

244. A review of Equistar record indicated that, on at least eleven occasions, Equistar's operating records did not document inspection of the container storage area in violation of IL SITE ID NUMBER 0630600005 and the RCRA.

245. Unless restrained by an Order of the Court, these and similar violations of IL SITE ID NUMBER 0630600005 and RCRA are likely to continue.

246. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation occurring before March 16, 2004 and \$32,500 per day for each violation of RCRA occurring after March 16, 2004.

**Count 25 – The Emergency Planning and Community Right-To-Know Act
Channelview- Failure to Timely Submit Forms Rs**

247. Paragraphs 1 through 9, and 75 through 86 of the Complaint are incorporated herein by reference as if fully set forth below.

248. The chemical substance glycol ether is a “toxic chemical” as defined by 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65.

249. The Equistar Channelview plant is a “facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §§ 355.20 and 372.3, and a “covered facility” within the meaning of 40 C.F.R. § 372.22.

250. The threshold quantity for a toxic chemical which is otherwise used at a facility is 10,000 pounds for 1999, 2000, and 2001 calendar years as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b).

251. The Equistar Channelview facility used 475,163 pounds, 709,061 pounds, and 559,211 pounds of glycol ether in 1999, 2000, and 2001, respectively.

252. Pursuant to 40 C.F.R. § 372.30(a), Equistar was required to submit to EPA and the TCEQ a complete Form R (EPA Form 9350-1) in accordance with the instructions in 40 C.F.R. Part 372, Subpart E.

253. Equistar failed to submit its Form Rs for the calendar years 1999, 2000, and 2001 in violation of 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E.

254. Unless restrained by an Order of the Court, these and similar violations of EPCRA and 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E are likely to continue.

255. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the EPCRA occurring after January 30, 1997 and before March 16, 2004.

**Count 26 – The Emergency Planning and Community Right-To-Know Act
Channel view- Failure to Accurately Complete Forms Rs**

256. Paragraphs 1 through 9, and 75 through 86 of the Complaint are incorporated herein by reference as if fully set forth below.

257. The following chemical substances are “toxic chemicals” as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65: benzene, xylene, toluene, styrene, naphthalene, ethylene, methanol, mercury, and lead.

258. The threshold quantity for a toxic chemical which is otherwise used at a facility is 10,000 pounds for 1999, 2000, and 2001 calendar years as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b).

259. For each of the toxic chemicals identified in paragraph 257 of this Complaint, the Equistar Channelview facility used over the threshold quantity of 10,000 pounds in calendar years 1999, 2000, and 2001.

260. Pursuant to 40 C.F.R. § 372.30(a), Equistar was required to submit to EPA and the TCEQ a complete Form R (EPA Form 9350-1) in accordance with the instructions in 40 C.F.R. Part 372, Subpart E.

261. A review of Equistar's EPCRA records, including its Form Rs, for the calendar years 1999, 2000, and 2001 indicated thirteen instances of data quality errors

for the maximum amount of the toxic chemicals on site at any point in time during the reporting years.

262. Equistar has therefore violated of 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E by not providing accurate information on its Form Rs.

263. Unless restrained by an Order of the Court, these and similar violations of EPCRA and 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E are likely to continue.

264. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the EPCRA occurring after January 30, 1997 and before March 16, 2004.

**Count 27 – The Emergency Planning and Community Right-To-Know Act
Channelview- Failure to Immediately Notify Releases**

265. Paragraphs 1 through 9, and 75 through 86 of the Complaint are incorporated herein by reference as if fully set forth below.

266. Butadiene is a CERCLA extremely hazardous substance (“EHS”) as defined Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with a reportable quantity (“RQ”) of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

267. Nitrogen oxide(s) is/are an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and 40 C.F.R. Part 355.20, with an RQ of 10 pounds as listed in 40 C.F.R. Part 355 (Appendices A and B).

268. Sulfuric Acid is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and 40 C.F.R. Part 355.20, with an RQ of 1000 pounds as listed in 40 C.F.R. Part 355 (Appendices A and B).

269. Benzene is a CERCLA hazardous substance as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

270. A review of Equistar's records, from June 27, 2001 and through December 05, 2002, revealed that on numerous occasions, Equistar released butadiene, nitrogen oxide(s), sulfuric acid, and benzene into the environment from its Channelview facility in a quantity greater than their RQs requiring immediate notification under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b) and 40 C.F.R. Part 355.40(b).

271. Equistar did not immediately notify the DPS nor the NCHC of these releases of EHSs as soon as Equistar had knowledge of the releases, as required by Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1) and 40 C.F.R. Part 355.40(b)(1).

272. Equistar's failure to immediately notify the DPS and the NCHC is a violation of Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), and Equistar is therefore subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

273. Unless restrained by an Order of the Court, these and similar violations of EPCRA, 40 C.F.R. § 372.30(a), and 40 C.F.R. Part 372, Subpart E are likely to continue.

274. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the EPCRA occurring after January 30, 1997 and before March 16, 2004.

**Count 28. – The Emergency Planning and Community Right-To-Know Act
Morris- Failure to Accurately Complete Forms Rs**

275. Paragraphs 1 through 9, and 75 through 86 of the Complaint are incorporated herein by reference as if fully set forth below.

276. The following chemical substances are “toxic chemicals” as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65: benzene, xylene, toluene, styrene, naphthalene, ethylene, ethyl benzene, vinyl acetate, butadiene, methanol, propylene, n-Hexane, phenanthrene, and propionaldehyde.

277. The Equistar Morris plant is a “facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §§ 355.20 and 372.3, and a “covered facility” within the meaning of 40 C.F.R. § 372.22.

278. The threshold quantity for a toxic chemical which is otherwise used at a facility is 10,000 pounds for 1999, 2000, and 2001 calendar years as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b).

279. For each of the toxic chemicals identified in paragraph 283, the Equistar Morris facility used over the threshold quantity of 10,000 pounds in calendar years 1999, 2000, and 2001.

280. Pursuant to 40 C.F.R. § 372.30(a), Equistar was required to submit to EPA and to the IDEQ a complete Form R (EPA Form 9350-1) in accordance with the instructions in 40 C.F.R. Part 372, Subpart E.

281. A review of Equistar’s EPCRA records, including its Form Rs, for the calendar years 1999, 2000, and 2001 revealed nineteen instances of data quality errors for the maximum amount of the toxic chemicals on site at any point in time during the reporting years.

282. Equistar has therefore violated 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E by not providing accurate information on its Form Rs.

283. Unless restrained by an Order of the Court, these and similar violations of EPCRA and 40 C.F.R. § 372.30(a) and 40 C.F.R. Part 372, Subpart E are likely to continue.

284. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the EPCRA occurring after January 30, 1997 and before March 16, 2004.

**Count 29 – The Emergency Planning and Community Right-To-Know Act
Morris- Failure to Immediately Notify Releases**

285. Paragraphs 1 through 9, and 75 through 86 of the Complaint are incorporated herein by reference as if fully set forth below.

286. Butadiene is a CERCLA hazardous substance as defined Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

287. Nitrogen oxide is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and 40 C.F.R. Part 355.20, with an RQ of 10 pounds as listed in 40 C.F.R. Part 355 (Appendices A and B).

288. Nitric oxide(s) is/are an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and 40 C.F.R. Part 355.20, with an RQ of 1000 pounds as listed in 40 C.F.R. Part 355 (Appendices A and B).

289. Benzene is a CERCLA hazardous substance as defined Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

290. A review of Equistar's records, from June 03, 2001 and through April 28, 2005, indicated that on numerous occasions the Morris facility released butadiene,

nitrogen oxide, nitric oxide(s), and benzene into the environment in a quantity greater than their RQs requiring immediate notification under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b) and 40 C.F.R. Part 355.40(b).

291. Equistar did not immediately notify the SEMA nor the Grundy County of these releases of EHSs as soon as Equistar had knowledge of the releases, as required by Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1) and 40 C.F.R. Part 355.40(b)(1).

292. Equistar's failure to immediately notify the SEMA and the Grundy County of each release is a violation of Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1).

293. Unless restrained by an Order of the Court, these and similar violations of EPCRA, 40 C.F.R. § 304(b)(1), and 40 C.F.R. Part 372, Subpart E are likely to continue.

294. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the EPCRA occurring after January 30, 1997 and before March 16, 2004.

**Count 30 – The Comprehensive Environmental Response,
Compensation, and Liability Act
Channelview- Failure to Immediately Notify Releases**

295. Paragraphs 1 through 9, and 87 through 91 of the Complaint are incorporated herein by reference as if fully set forth below.

296. Butadiene, CASRN No. 106-99-0, is a hazardous substances, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

297. Nitrogen oxide(s), CASRN No. 10102-44-0, is/are hazardous substances, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4

298. Benzene, CASRN No. 71-43-2, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

299. Sulfuric Acid, CASRN No. 7664-93-9, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 1,000 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

300. A review of Equistar's records, from June 27, 2001 and through December 5, 2002, indicated that on numerous occasions Equistar released butadiene, nitrogen oxide(s), benzene, and sulfuric acid into the environment from its Channelview facility in a quantity equal to, or greater than, their RQs.

301. Each of the releases identified in Paragraphs 300 of this Complaint from the Channelview facility was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

302. Equistar did not immediately notify the NRC of these releases as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.6.

303. Equistar's failure to immediately notify the NRC of each release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.6 and is therefore subject to the assessment of penalties under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c).

304. Unless restrained by an Order of the Court, these and similar violations of CERCLA and 40 C.F.R. § 302.6 are likely to continue.

305. Pursuant to Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the CERCLA occurring after January 30, 1997 and before March 16, 2004.

**Count 31— The Comprehensive Environmental Response, Compensation,
and Liability Act
Morris - Failure to Immediately Notify Releases**

306. Paragraphs 1 through 9, and 87 through 91 of the Complaint are incorporated herein by reference as if fully set forth below.

307. Butadiene, CASRN No. 106-99-0, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

308. Nitrogen oxide(s), CASRN No. 10102-44-0, is/are hazardous substances, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4

309. Benzene, CASRN No. 71-43-2, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with an RQ of 10 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

310. Nitric oxide, CASRN No. 10102-43-9, is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302.4, with a RQ of 1,000 pounds as listed in 40 C.F.R. Part 302, Table 302.4.

311. A review of Equistar's records, from June 27, 2001 and through December 5, 2002, indicated that on numerous occasions Equistar released butadiene, nitrogen oxide(s), benzene, and nitric oxide into the environment from its Morris facility in a quantity equal to, or greater than, their RQs.

312. Each of these releases from the Morris facility was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

313. Equistar did not immediately notify the NRC of the releases identified in Paragraph 318 of this Complaint, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.6.

314. Equistar’s failure to immediately notify the NRC of each release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.6 and is therefore subject to the assessment of penalties under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c).

315. Unless restrained by an Order of the Court, these and similar violations of CERCLA and 40 C.F.R. § 302.6 are likely to continue.

316. Pursuant to Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Equistar is liable for a civil penalty of up to \$27,500 per day for each violation of the CERCLA occurring after January 30, 1997 and before March 16, 2004.

Count 32 – NSPS Subpart A – All facilities

317. Paragraphs 1 through 9, 46 through 58, and 69 through 72 of the Complaint are incorporated herein by reference as if fully set forth below.

318. EPA has conducted investigations of one or more of the petrochemical facilities identified in Paragraph 8 of the Complaint, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Equistar’s modification and operation of these facilities. The

United States alleges the following based on the results of EPA's investigation, information and belief:

319. Pursuant to 40 C.F.R. Part 60, Subpart A, § 60.1, Equistar's petrochemical facilities are stationary sources which contain affected facilities which were constructed or modified after December 13, 1990. On one or more occasions, since May 30, 2001, Equistar's flaring devices have emitted unpermitted quantities of a criteria air pollutant, under circumstances that did not represent good air pollution control practices, in violation of NSPS, 40 C.F.R. § 60.11(d).

320. Unless restrained by an Order of the Court, these and similar violations of the CAA and 40 C.F.R. § 60.11(d) will continue.

321. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.

Count 33 – NSPS Subpart NNN - Morris

322. Paragraphs 1 through 9, 46 through 58, and 69 through 72 of the Complaint are incorporated herein by reference as if fully set forth below.

323. Equistar was required to submit a complete Title V permit application to the State of Illinois no later than March 1, 1996 for its Morris facility.

324. As of July 1, 2007, Equistar has not submitted a complete Title V permit application to Illinois EPA which includes but is not limited to the two deethanizer distillation columns with a vent to the main flare.

325. Equistar's failure to submit a timely and complete Title V permit application to the State of Illinois constitutes a violation of Section 503 of the CAA and the regulations at 40 C.F.R. §§ 70.5(a) and 70.7(b).

326. Unless restrained by an Order of the Court, these and similar violations of Section 503 of the CAA and the regulations at 40 C.F.R. §§ 70.5(a) and 70.7(b) will continue.

327. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.

Count 34 – Cooling Tower Violations - Morris

328. Paragraphs 1 through 9, and 46 through 58 of the Complaint are incorporated herein by reference as if fully set forth below.

329. 35 IAC 218.986 prescribes actions sources shall take to inspect, monitor, and repair non-contact process water cooling towers. These actions include monitoring for leaks of volatile organic material ("VOM") into the cooling water, identifying the source of a leak within 3 days of discovery, repairing or removing from service the source of a leak as soon as possible, but no later than 30 days unless the leak cannot be repaired until the next scheduled shutdown for maintenance, and reporting all activity to IEPA.

330. Equistar uses a Photoionization Detector ("PID") to identify any leaks of volatile VOM into the cooling tower water. Equistar takes weekly samples of the water and uses the PID to identify the presence of VOM in the sample, indicating a leak.

331. In October 2001 Equistar discovered a leak of VOM into the cooling water at exchanger number EA-501 within the ethylene production unit, based on an elevated PID reading.

332. From 2001 until 2006, Equistar continued to conduct weekly PID monitoring of the cooling water at exchanger number EA-501, and recorded increasing levels of VOM.

333. Equistar failed to inform IEPA of the increasing levels of VOM from leaks at exchanger number EA-501.

334. Equistar shut down the ethylene production unit in August 2004 due to unrelated leaks of VOM to the cooling water at heat exchanger EA-206. This would have been Equistar's earliest opportunity to also repair the leak at exchanger EA-501, as required by 35 IAC 218.986.

335. Equistar violated 35 IAC 218.986(d)(4)(B) by failing to repair the leaks of VOM from exchanger EA-501 during the August 2004 shut down.

336. Equistar violated IAC 218.986(d)(6) by failing to submit annual reports to IEPA identifying any leaks that were not repaired within 30 days of discovery, and providing a description of the leaks.

337. Unless restrained by an Order of the Court, these and similar violations of the CAA and 35 IAC 218.986 will continue.

338. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.

Count 35 – Benzene Waste NESHAP Violations – All Facilities

339. The allegations in Paragraphs 1 through 9, 46 through 58, and 64 through 66 are hereby re-alleged and incorporated by reference as if fully set forth herein.

340. EPA has conducted investigations of one or more of the petrochemical facilities identified in Paragraph 8 of the Complaint, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Equistar's operation of these facilities. The United States alleges the following based on the results of EPA's investigation, information and belief.

341. Equistar owns and operates affected facilities subject to the requirements of 40 C.F.R. Part 61, Subparts A and FF—National Emission Standards for Benzene Waste Operations.

342. Based on the EPA inspection reports and further investigation, Equistar has violated the provisions of 40 C.F.R. Part 61, Subparts A and FF by failing to include required information in its annual reports, to properly identify benzene wastes at the appropriate point of generation for the total annual benzene ("TAB") calculation, to include all benzene waste generated in the TAB calculation, to monitor containers used to handle, transfer, or store benzene wastes, to include all changes that occurred in the process units in the annual TAB report, to provide background documentation for sample data in its annual TAB report, and to keep its uncontrolled benzene waste below regulatory levels.

343. Unless restrained by an Order of the Court, these and similar violations of the Act and the implementing regulations will continue.

344. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.

Count 36 – Leak Detection and Repair Violations – All Facilities

345. The allegations in Paragraphs 1 through 9, and 46 through 68 are realleged and incorporated by reference as if fully set forth below.

346. EPA has conducted investigations of one or more of the petrochemical facilities identified in Paragraph 8 of the Complaint, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Equistar's operation of these facilities. The United States alleges the following based on the results of EPA's investigation, information and belief.

347. Equistar owns and operates affected facilities subject to the requirements of 40 C.F.R. Part 60, Subparts A and VV (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry); 40 C.F.R. Part 61, Subparts A and J (Standards of Performance for Equipment Leaks of Benzene); 40 C.F.R. Part 63, Subparts A, F, G, H, and UU (National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks).

348. Based on the EPA inspection reports and further investigation, Equistar has on numerous occasions, violated the provisions of 40 C.F.R. Part 60, Subpart A and VV, 40 C.F.R. Part 61, Subparts A and J, 40 C.F.R. Part 63, Subpart V, and 40 C.F.R. Part 63, Subparts A, F, G, H, and UU by failing to attempt first repairs, to perform final repairs to valves or place the components on the delay of repair list, to justify delay of repair of

leaking components, to remonitor valves, to monitor valves on a monthly basis, and to close open-ended lines.

349. Unless restrained by an Order of the Court, these and similar violations of the Act and the implementing regulations will continue.

350. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004

Count 37 – Protection of Stratospheric Ozone - All Facilities

351. Paragraphs 1 through 9, and 46 through 63 of the Complaint are incorporated herein by reference as if fully set forth below.

352. EPA has conducted investigations of one or more of the petrochemical facilities identified in Paragraph 8 of the Complaint, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Equistar's modification and operation of these facilities. The United States alleges the following based on the results of EPA's investigation, information and belief:

353. At all times relevant to this Complaint, Equistar's petrochemical facilities identified in Paragraph 8, used industrial refrigeration equipment subject to the leak repair requirements for industrial process equipment containing more than fifty (50) pounds of refrigerant.

354. On one or more occasions, since May 30, 2001, Equistar has failed to meet the requirements set forth in at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") at its petrochemical facilities.

355. Unless restrained by an Order of the Court, these and similar violations of the CAA and 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166 will continue.

356. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.

**Count 38 – CAA Excess Emission Claims – Texas SIP
Channelview, Chocolate Bayou, and La Porte**

357. Paragraphs 1 through 9, and 49 through 58 of the Complaint are incorporated herein by reference as if fully set forth below.

358. Based upon facility records submitted to the TCEQ from October 2005 through February 2006, Equistar exceeded its allowable emission limits for one or more regulated pollutants at its Channelview, Chocolate Bayou, and La Porte facilities.

359. The following violations occurred at Equistar's Channelview or LaPorte facilities:

(a). Failure to prevent unauthorized emissions of 119.35 pounds (lbs) of benzene and 154.69 lbs of VOC during an emissions event that occurred on April 1, 2005 and lasted 200 hours and 30 minutes, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2), Air Permit No. 1768, General Condition 8 and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 206237).

(b). Failure to prevent unauthorized emissions of 25 lbs of 1,3-butadiene, 603 lbs of N-butane, 1,756 lbs of butane, 155 lbs of isobutane, and 7 lbs of propylene during an emissions event that occurred on May 24, 2005 and lasted 2 hours, in

violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 6387, General Condition 8 and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212075). These emissions are not permitted.

(c). Failure to monitor 209 valves in VOC service in the Q1 Unit using 40 CFR part 60, Method 21, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1), 115.354(2)(c), and 116.115(c), Air Permit No. 6387, General Condition 8 and and Operating Permit No. O-01606, Special Condition 14.C. and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 60.482-7(a) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212293).

(d). Failure to conduct the performance test for the Q1 incinerator stack as required by the NSR permit 19109, dated January 21, 2004, within 180 days of increasing hourly polymer production to greater than 110% of that maintained during the last satisfactory test, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and 116.115(c), Air Permit No. 19109, Special Condition 14.C and Operating Permit No. O-01606, Special Condition 14.C. and 40 CFR §§ 60.564(a)(1) and 60.8(a) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212293). Specifically, at the time of permit issuance, the unit was capable of producing more than 110 percent of what was represented during the last stack test.

(e). Failure to control the particulate emissions as required by the permit standards and by passed the particulate emissions from the mixer feed hoppers in the Q1 unit during the certification period, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 19109, Special Condition 9 and Operating Permit No. O-01606, Special Condition 9.A. and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212297).

(f). Failure to conduct the daily checks of pumps for four days in Q1 Unit, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1), Operating Permit No. O-01606, Special Condition 1.A. and 40 CFR § 60.482-2(d)(5)(ii) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212299).

(g). Failure to cap or plug 2 open ended lines in the Q1 Unit, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1), 115.352(4), and 116.115(c), Operating Permit No. O-01606, Special Condition 1.A. and 40 CFR § 60.482-6(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212303).

(h). Failure to report particulate matter control deviation and barrier fluid exceedance deviations in the Q1 Unit in the report dated September 24, 2004, in violation of 30 TEX. ADMIN. CODE § 122.145(2)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212307).

(i). Failure to submit the engineering report describing in detail the vent system used to vent each affected vent stream to a control device after the piping changes in August 2003 in Q1 Unit, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and 40 CFR § 60.565(b) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 212308).

(j). Failure to prevent a unauthorized emissions of 990 pounds ("lbs") of 1,3 butadiene during an avoidable emissions event that occurred on November 23, 2004 and lasted three minutes, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(1), Air Permit No. 2128, General Condition 8 and TEX. HEALTH & SAFETY CODE § 382.085(b). These emissions are not permitted.

(k). Failure to prevent a unauthorized emissions of 1,532 lbs of propylene and 10 lbs of isobutane during an avoidable emissions event that occurred on July 1, 2004 and lasted 4 hours and 54 minutes, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(1), Air Permit No. 24887, General Condition 8 and TEX. HEALTH & SAFETY CODE § 382.085(b). These emissions are not permitted.

(l). Failure to prevent a unauthorized emissions of 1,532 lbs of propylene and 10 lbs of isobutane during an avoidable emissions event that occurred on July 1, 2004 and lasted 4 hours and 54 minutes, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(1), Air Permit No. 24887, General Condition 8 and TEX. HEALTH & SAFETY CODE § 382.085(b). These emissions are not permitted.

(m). Failure to equip each open-ended line or valve with a cap, blind flange, plug, or second valve., in violation of 30 TEX. ADMIN. CODE §§ 101.20(2), 113.130, and 115.352, and 116.115(c), Air Permit No. 2128, Special Condition 2C and 10E and Air Permit No. 24887, Special Condition 1E and 40 CFR § 63.167(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, two valves in the East Tank Farm, one line in the Alkylation Unit, and one line in the C4 Recovery Unit were not equipped with a cap, blind flange, plug, or second valve.

(n). Failure to perform monthly monitoring of the East Plant Cooling Tower, Emission Point Number ("EPN") 24E04, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 2128, Special Condition 7A and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, streams from six headers returning water to the cooling tower to a single monitoring point were combined prior to monitoring, but required to monitor the six headers individually.

(o). Failure to maintain an emission rate below the allowable emission limit for EPN 24E04, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(F) and (c), Air Permit No. 2128, Special Condition 7B and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, a canister sample was taken at Header Number 2 and results revealed emissions were 6.16 lbs per hour ("lbs/hr"), but the permitted limit is 3.23 lbs/hr.

(p). Failure to represent the product and process information properly in the renewal application dated August 2004 for Permit No. 24887, in violation of 30 TEX. ADMIN. CODE § 116.116(a). Specifically, alkylates were not separated into C5s, C6s, C8s, C9s, and C10s. The alkylates contain 3 to 6% of isopentane and more than 1,102 tons per year is being produced. This exceeds the Synthetic Organic Chemical Manufacturing Industry ("SOCMI") exemption limit, but the exemption was claimed.

360. The following violations occurred at Equistar's Chocolate Bayou Complex:

(a). Failure to perform fugitive monitoring in accordance with Method 21, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and (2) and 115.355(1) and 40 CFR §§ 60.485(b)(1) and 63.180(b)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 211032).

(b). Failure to maintain a seal on plugs installed on an open ended line, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and (2) and 115.352(4) and 40 CFR §§ 60.482-6(a)(2) and 63.167(a)(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 211038).

(c). Failure to equip an open-ended valve with a cap, blind flange, plug, or a second valve, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and (2) and 115.352(4) and 40 CFR

§§ 60.482-6(a)(2) and 63.167(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) (Violation Tracking No. 211040).

361. The following violations occurred at Equistar's Chocolate Bayou Polymers

Plant:

(a). Failure to prevent unauthorized emissions of 16 pounds of cyclohexane and 12 pounds of isobutane from a failed seal on a pump in the Polymers Unit during an emissions event that occurred on January 23, 2005 that lasted for 5 minutes, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 2482B, Special Condition 1 and TEX. HEALTH & SAFETY CODE § 382.085(b). (Violation Tracking No. 216059)

(b). Failure to prevent unauthorized emissions of 27 pounds of hexane from the Unit Separator, EPN EM-1501, during an emission event that occurred on February 3, 2005 and lasted 96 hours, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 2482B, Special Condition 1 and TEX. HEALTH & SAFETY CODE § 382.085(b). (Violation Tracking No. 216061)

(d). Failure to prevent unauthorized emissions of 2,161 pounds of the VOCs acetylene and ethylene, 2,392 pounds of carbon monoxide, and 428 pounds of nitrogen oxides from the EPN QE8050B in the Olefins Unit, during an emission event that occurred on March 9, 2005 and lasted 1.4333 hours, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 18978, Special Condition 1 and TEX. HEALTH & SAFETY CODE § 382.085(b). (Violation Tracking No. 213742)

362. The following violations occurred at Equistar's LaPorte, Chocolate or

Corpus Christi facilities:

(a). Failure to monitor 59 valves in Volatile Hazardous Air Pollutant (VHAP) service in the Aromatics/Isoprene Unit using Method 21 of Appendix A of 40 Code of Federal Regulations (CFR) part 60, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2), 115.354(2)(B), 122.143(4), Operating Permit O-02260, Special Terms and Conditions 1.A, 40 CFR § 63.168(b)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).

(b). Failure to monitor 2 pumps in VHAP service in the Aromatics/Isoprene Unit using Method 21 of Appendix A of 40

CFR part 60, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2), 115.354(2)(B)(C) and (D), 122.143(4), Operating Permit O-02260, Special Terms and Conditions 1.A, 40 CFR § 63.163(b)(1), and TEX. HEALTH & SAFETY CODE § 382.085(b).

(c). Failure to cap or plug 46 open ended lines in the Aromatics/Isoprene Unit discovered between September 25, 2003 and February 26, 2004, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2), 115.352(4), 122.143(4), Operating Permit O-02260, Special Terms and Conditions 1.A, 40 CFR § 63.167(a)(1), and TEX. HEALTH & SAFETY CODE § 382.085(b).

(d). Failure to make the first attempt at repair within the five calendar days after the leak is found for three pumps, two connectors and two sensory leaks and failed to complete the repair within 15 days for one pump, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2), 115.352(2), 122.143(4), Operating Permit O-02260, Special Terms and Conditions 1.A, 40 CFR § 63.163(c)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b).

(e). Failure to monitor the 105 connectors to maintain a 97% control efficiency as represented in New Source Review Permit No. 19480, in violation of 30 TEX. ADMIN. CODE § 116.116(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).

(f). Failure to report some instances of deviations in the Aromatics/Isoprene Unit in the report dated January 14, 2004, in violation of 30 TEX. ADMIN. CODE § 122.145(2), and TEX. HEALTH & SAFETY CODE § 382.085(b).

(g). Failure to maintain the emissions from storage tanks 320T247-2 and 320T285 within the permit allowable rate, in violation of 30 TEX. ADMIN. CODE § 122.143(4), Operating Permit O-02260, Special Condition 20, 30 TEX. ADMIN. CODE § 116.115(c) New Source Review (NSR) Permit No. 19480, Special Condition 1, and TEX. HEALTH & SAFETY CODE § 382.085(b).

(h). Failure to maintain the emissions from storage tanks 320T247-2 and 320T285 within the permit allowable rate, in violation of 30 TEX. ADMIN. CODE § 122.143(4), Operating Permit O-02260, Special Condition 20, 30 TEX. ADMIN. CODE § 116.115(c) New Source Review (NSR) Permit No. 19480, Special Condition 1, and TEX. HEALTH & SAFETY CODE § 382.085(b).

(i). Failure to operate the flare, emission point number 318Z3, within the permit limits 10 times between June 25, 2003 and June 11, 2004, in violation of 30 TEX. ADMIN. CODE § 122.143(4), Operating Permit O-02260, Special Condition 2, 30 TEX. ADMIN. CODE § 116.115(c) NSR Permit Nos. 19480 and 20993, Special Condition 1, and TEX. HEALTH & SAFETY CODE § 382.085(b).

363. Unless restrained by an Order of the Court, these and similar violations of the CAA and the Texas SIP will continue.

364. Pursuant to Section 113(b) of the CAA, Equistar is liable for civil penalties not to exceed \$27,500 per day for each violation of the CAA between January 30, 1997 and March 15, 2004; and \$32,500 per day for each violation occurring after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, based on the facts and allegations contained in this Complaint, Plaintiff, the United States, respectfully requests that this Court:

1. Order Equistar to immediately comply with the state and federal statutory and regulatory requirements cited in this Complaint;

2. Order Equistar to take appropriate measures to mitigate the adverse effects of its violations on public health and the environmental, and to mitigate harms related to the violations alleged herein;

3. Assess civil penalties against Equistar for up to the amounts provided in the applicable statutes; and

4. Grant the United States such other relief as this Court deems just and proper.

FOR PLAINTIFF, UNITED STATES OF AMERICA:

Date: 16 July 2007

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

Date: 7/03/07

DIANNE M. SHAWLEY
Senior Counsel
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street, N.W.
Washington, DC 20004

OF COUNSEL:

BRUCE FERGUSON

Attorney-Advisor

U.S. EPA

Office of Regulatory Enforcement
(2248A)

1200 Pennsylvania Ave, N.W.
Washington, DC 20460

MARCIA E. MONCRIEFFE

Assistant Regional Counsel

RCRA Branch

U.S. EPA Region VI

1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

SUSAN PROUT

Associate Regional Counsel

U.S. Environmental Protection Agency,
Region 5

77 West Jackson Blvd

Chicago, Illinois 60604-3590